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10/087,339	03/01/2002	Allan N. Weiss	CSSK-020CP3	5050

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EXAMINER
VAN BRAMER, JOHN W

ART UNIT	PAPER NUMBER
3622	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/087,339	WEISS, ALLAN N.
	Examiner	Art Unit	
	JOHN VAN BRAMER	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 December 2008*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,6-11,14-20,23-28,31-48 and 50-56* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4, 6-11, 14-20, 23-28, 31-48, and 50-56* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   The applicants amendment filed December 28, 2008, has cancelled claims 12,

13, 21, 29, and 30. Claims 1, 35, and 55 have been amended and no new claims were

added. Thus, the currently pending claims, addressed below, are 1-4, 6-11, 14-20, 23-

28, 31-48, and 50-56.

Claim Rejections - 35 USC § 112

2.   The applicant's amendment filed on December 28, 2008 has cancelled Claims 4,

12, 21, and 29. Thus the 35 U.S.C. 112 rejections of said claims is overcome and the

rejection hereby withdrawn.

3.   The applicant's amendment filed on December 28, 2008 has cancelled Claims 13

and 30. Thus the 35 U.S.C. 112 rejections of said claims is overcome and the rejection

hereby withdrawn.

Claim Rejections - 35 USC § 101

4.   The amendment filed on December 28, 2008 has failed to overcome the 35 USC

101 rejections of claims 1-3, 6-11, and 14-17, raised in the Office Action dated October

16, 2008. The amendment requires that the defining steps be done in a computer

system. This merely requires that data is received and possibly stored in the computer

system. However, the receiving and transmitting of data is considered "insignificant

solution activity" and as such does satisfy the requirement that the method claim is tied

to another statutory class. The shifting and offering steps are not disclosed as being

done by the claimed computer system and as such may be performed by a person

looking at the definitions found in the claimed computer system. Thus the rejection is

maintained.

5.   The amendment of claims 35 and 55 filed on December 28, 2008 has overcome

the 35 USC 101 rejections of claims 35-44, and 55. Thus the rejection is hereby

withdrawn.

Claim Rejections - 35 USC § 102

6.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7.   Claims 1-4, 6-11, 14-20, 23-28, 31-48, and 50-56 are rejected under 35

U.S.C. 102(b) as being anticipated by Mayo ("Investments, An Introduction", Fourth

Edition, The Dryden Press, ISBN: 0-03-097647-2, 1993, pgs 521-627).

Claims 1, 18, 55, and 56: Mayo discloses a method and system of providing shares in a proxy asset set, each proxy asset in said proxy asset set having a proxy asset account value, said method comprising:

a. Defining in a computer system a proxy asset set account value equal to the sum of the account values of all proxy assets in said proxy asset set, including constraining said proxy asset set account value by a value of a resource pool including one or more illiquid assets. (Page 586, Paragraphs 1, 2 and Exhibit 20.1; Page 601, Paragraphs 4 through 6)

b. Defining in the computer system a first set of shares representing claims on a first subset of said proxy assets, wherein said first set of shares experience an increase in value as a function of a positive change in an index. (Page 601, Paragraphs 4 through 6)

c. Defining in the computer system a second set of shares representing claims on a second subset of proxy assets, wherein said second set of shares experience an increase in value as a function of a negative change in the index. (Page 601, Paragraphs 4 through 6)

d. Shifting, in the computer system, value between said first set of shares and said second set of shares as a function of a change in the index. (Page 601, Paragraphs 4 through 6)

e. Offering, by the computer system, said first set of shares and said second set of shares, wherein at least some shares from one or both of said first set of shares and said second set of shares may be procured, without a requirement of

procuring sets of shares composed of shares from said first set of shares and

said second set of shares. (Page 599, Paragraph 1 through Page 600,

Paragraph 2)

Claims 2 and 19: Mayo discloses a method and system as in claims 1 and 18

respectively, wherein at least one issuer does said offering and the issuer has the

same number of shares from said first set of shares and said second set of shares.

(Page 601, Paragraphs 2 and 3)

Claims 3 and 20: Mayo discloses a method and system as in claims 2 and 19

respectively, wherein said shifting is controlled by said issuer. (Page 601,

Paragraphs 4 through 6)

Claim 4: Mayo discloses a method as in claims 1, wherein said offering includes

offering one or more shares from said first set of shares and one or more shares

from said second set of shares at different times. (Page 601, Paragraphs 4 through

6)

Claims 6 and 23: Mayo discloses a method and system as in claims 1 and 18

respectively 1, wherein said proxy assets represent claims on one or more foreign or

domestic liquid or illiquid assets or proxy assets, such as assets chosen from a

group of assets comprising stocks, bonds, mutual funds, groups of stocks, accounts,

real property, personal property, and one or more streams of income from one or

more corporations, partnerships, joint ventures, sole proprietorships, individuals,

trusts, estates, or contracts. (Page 601, Paragraphs 4 through 6)

Claims 7 and 24: Mayo discloses a method and system as in claims 1 and 18

respectively, wherein said proxy assets represent one or more underlying assets

represented by said index. (Page 601, Paragraphs 4 through 6)

Claims 8 and 25:   Mayo discloses a method and system as in claims 1 and 18

respectively, wherein said index represents a composite index chosen from a group

comprising: 1) NASDAQ; 2) S & P 500; 3) Dow Jones Industrial Average; 4) NYSE

Composite; and 5) Nikkei. (Page 601, Paragraphs 4 through 6)

Claims 9 and 26:   Mayo discloses a method and system as in claims 1 and 18

respectively, wherein said index is weighted. (Page 601, Paragraphs 4 through 6)

Claims 10 and 27:   Mayo discloses a method and system as in claims 1 and 18

respectively, wherein said offering includes offering by a plurality of issuers. (Page

601, Paragraphs 2 and 3)

Claims 11 and 28:   Mayo discloses a method and system as in claims 1 and 18

respectively, wherein said proxy asset set includes a plurality of types of proxy

assets, wherein each type of proxy asset represents one or more different liquid or illiquid assets. (Page 601, Paragraphs 4 through 6)

Claims 14 and 31:   Mayo discloses a method and system as in claims 1 and 18 respectively, wherein said offering includes offering shares from at least one of said first set of shares and said second set of shares on an exchange. (Page 601, Paragraphs 4 through 6)

Claims 15 and 32:   Mayo discloses a method and system as in claims 1 and 18 respectively, wherein said offering includes offering by an issuer to an investor shares from one of said first set of shares or said second set of shares in accordance with an agreement imposing conditions on at least one of said shifting or on a distribution to said investor as a function of a value of said available shares. (Page 601, Paragraphs 4 through 6)

Claims 16 and 33:   Mayo discloses a method and system as in claims 1 and 18 respectively, further comprising: F. terminating the offering shares from at least one of said first set of shares and said second set of shares as a function of a triggering event, wherein said triggering event is chosen from a group of events comprising: 1) a termination of a predetermined period of time; 2) a value variation in said index; 3) a change in rate of return of said proxy asset shares; 4) a change in a set of one or more economic indicators; 5) a change in level of risk reward; 6) a change in the

value of the resource pool; and 7) a change in the prime lending rate. (Page 601,

Paragraphs 4 through 6)

Claims 17 and 34:   Mayo discloses a method and system as in claims 1 and 18

respectively, further comprising: F. adjusting the value of said resource pool as a

function of a triggering event, wherein said triggering event is chosen from a group

of events comprising: 1) a termination of a predetermined period of time; 2) adding

an index to said index or deleting said index; 3) a value variation in said index; 4) a

change in a set of one or more economic indicators; 5) a change in a level of risk

reward; and 6) a change in the prime lending rate. (Page 601, Paragraphs 4 through

6)

Claims 35 and 45:   Mayo discloses a method and system for providing a proxy

asset set of two or more proxy assets that responds an index, each proxy asset of

the proxy assets set having a proxy asset account value and a number of proxy

asset shares representing equal claims on the proxy asset account value, the proxy

asset set having a total number of shares equal to a sum over all the number of

proxy asset shares in the proxy assets set and having a proxy assets set account

value equal to a sum over all the proxy asset account values of the proxy assets set,

the method comprising:

a. Defining a proxy asset account value with a predetermined account formula

    responsive to the index, wherein the index represents one or more corporate

stocks, mutual funds, proxy assets, or a composite index chosen from a group of

indices derived from or comprising one or more of the: 1) NASDAQ; 2) S & P

500; 3) Dow Jones Industrial Average; 4) NYSE Composite; and 5) Nikkei. (Page

601, Paragraphs 4 through 6)

b. Constraining the proxy assets set account value by a value of a resources pool

including one or more illiquid assets. (Page 601, Paragraphs 4 through 6)

c. Reevaluating the proxy asset account value according to the account formula

upon occurrence of each event of a plurality of predetermined events. (Page 601,

Paragraphs 4 through 6)

Claims 36, 46 and 47: Mayo discloses the method and system of claims 35 and 45

respectively, further comprising: D. offering one or more of said proxy assets shares

for public or private trading. (Page 601, Paragraphs 4 through 6)

Claim 37: Mayo discloses the method of claim 35, further comprising: D. offering one

or more of said proxy assets shares on an exchange. (Page 601, Paragraphs 4

through 6)

Claims 38 and 48:   Mayo discloses the method and system of claims 35 and 45

respectively, further comprising: D. trading one or more of said proxy asset shares.

(Page 601, Paragraphs 4 through 6)

Claims 39:   Mayo disclose the method and system of claims 35, further

comprising: D. forming, from said proxy asset shares, a first set of shares configured

to experience an increase in value as a function of a positive change in said index;

and E. forming, from said proxy asset shares, a second set of shares configured to

experience an increase in value as a function of a negative change in said set of

indices. (Page 601, Paragraphs 4 through 6)

Claims 40 and 50:   Mayo discloses the method and system of claims 39 and 49

respectively, further comprising: F. shifting value between said first set of shares and

said second set of shares. (Page 601, Paragraphs 4 through 6)

Claims 41 and 51:   Mayo discloses the method and system of claims 35 and 45

respectively, further comprising: D. redeeming one or more of said proxy asset

shares. (Page 601, Paragraphs 4 through 6)

Claims 42 and 52:   Mayo discloses the method and system of claims 35 and 45

respectively, further comprising: D. offering one or more of said proxy asset shares;

and E. terminating the offering of said proxy asset shares as a function of a

triggering event, wherein said triggering event is chosen from a group of events

comprising: 1) a termination of a predetermined period of time; 2) a value variation in

said index; 3) a change in rate of return of said proxy asset shares; 4) a change in a

set of one or more economic indicators; 5) a change in level of risk reward; 6) a

change in the value of the resource pool; and 7) a change in the prime lending rate.

(Page 601, Paragraphs 4 through 6)

Claims 43 and 53:   Mayo discloses the method and system of claims 35 and 45

respectively, further comprising: D. adjusting the value of said resource pool as a

function of a triggering event, wherein said triggering event is chosen from a group

of events comprising: 1) a termination of a predetermined period of time; 2) adding

an index to said index or deleting said index; 3) a value variation in said index; 4) a

change in a set of one or more economic indicators; 5) a change in a level of risk

reward; and 6) a change in the prime lending rate. (Page 601, Paragraphs 4 through

6)

Claims 44 and 54:   Mayo discloses the method and system of claims 35 and 45

respectively, wherein the account formula includes a leverage factor, and wherein

said leverage factor is applied to weight the index. (Page 601, Paragraphs 4 through

6)

Response to Arguments

8.   Applicant's arguments filed July 17, 2008 have been fully considered but they are

not persuasive.

    a.   The applicant argues that Mayo is not understood to teach proxy assets

    that are based on one or more illiquid assets as recited in claim 1. However,

Mayo discloses, on Page 586, paragraphs 1 and 2 and Exhibit 20.1, that future

contracts and arbitrage transactions include proxy assets for commodities such

as wheat or cattle which is an illiquid asset. The examiner has used the term

"proxy asset" in a manner consisted with the applicants disclosure on Page 7,

lines 1-22 of the applicants specification. The applicant argues that arbitrage and

futures trading of cattle and wheat are not the equivalent of the claimed illiquid

assets since they are traded on a public exchange. However, such a contention

is not supported by the applicant specification. The applicant specifically states

in the Specification on Page 7, lines 16 - 20 that examples of illiquid assets

include infrequently traded corporate stocks, infrequently traded bonds, livestock,

and thoroughbreds. The examples provided indicate that the inclusion of the

items on a public exchange is not the defining factor pertaining to the require

illiquid asset, since corporate stocks and bonds also have public exchange. It

appears from the applicant's specification that the frequency of trading is more

indicative of illiquidity. Regardless, it is clear from that applicants specification

that the term illiquid is to be interpreted at least as broadly as to include the

livestock disclosed by Mayo.

Conclusion

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

10.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to JOHN VAN BRAMER whose telephone number is

(571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through

Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Van Bramer
/John Van Bramer/
Examiner, Art Unit 3622

/Eric W. Stamber/
Supervisory Patent Examiner, Art Unit 3622